

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

36

1. REPORT DATE: June 15, 2004	2. BUREAU AGENDA NO.: JUN-2004-OSA-0168*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: June 24, 2004
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: Legal Review: R. Albert 7-8108	DOCKETED JUL 01 JUN 30 2004 DOCUMENT FOLDER
7. PERSON IN CHARGE: K. Schiavo 3-6165	
8. DOCKET NO.: A-310749F7002	

9. (a) **CAPTION** (abbreviate if more than 4 lines)
(b) **Short summary of history & facts, documents & briefs**
(c) **Recommendation**

(a) Joint Petition of The United Telephone Company of Pennsylvania, d/b/a Sprint (Sprint) and Ernest Communications, Inc. (Ernest), for approval of a Master Interconnection, Collocation and Resale Agreement under Sections 252 (a)(1) and (e) of the Telecommunications Act of 1996

(b) On May 4, 2004, Sprint and Ernest filed a Joint Petition seeking approval of a Master Interconnection, Collocation and Resale Agreement (Agreement) under Sections 252 (a)(1) and (e) of the Telecommunications Act of 1996, that would provide for the interconnection of the two companies' networks and make available to Metro Teleconnect services offered by Sprint for resale as well as resale support services. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on May 15, 2004. No comments have been received.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which grants the Joint Petition, thereby approving the Agreement, consistent with this Opinion and Order.

Order Doc. No. 478220v1

Calendar Doc. No. 478253v1

10. MOTION BY: Commissioner Chm. Fitzpatrick
 SECONDED: Commissioner Bloom
- Commissioner Thomas - Yes
Commissioner Pizzingrilli - Yes
Commissioner Holland - Yes

CONTENT OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

June 25, 2004

A-310749F7002

ZSUZSANNA E BENEDEK
SENIOR ATTORNEY
240 NORTH THIRD STREET SUITE 201
HARRISBURG PA 17101

DOCUMENT

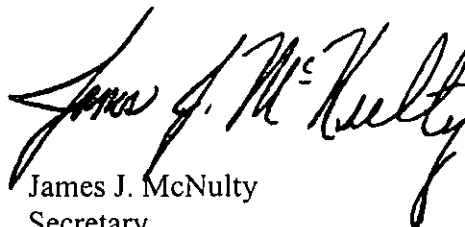
Joint Petition of The United Telephone Company of Pennsylvania
d/b/a Sprint and Ernest Communications, Inc. for approval of a
Master Interconnection, Collocation, and Resale Agreement
under Section 252(e) of the Telecommunications Act of 1996

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on June 24, 2004, has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,


James J. McNulty
Secretary

mk
encls
cert. mail

BRYAN CORNETT
ERNEST COMMUNICATIONS INC
5275 TRIANGLE PARKWAY SUITE 150
NORCROSS GA 30092

DOCKETED
JUL 12 2004

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 24, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

DOCKETED
JUL 12 2004

Joint Petition of The United Telephone
Company of Pennsylvania d/b/a Sprint
and Ernest Communications, Inc. for approval
of a Master Interconnection, Collocation, and
Resale Agreement under Section 252(e) of the
Telecommunications Act of 1996

A-310749F7002

OPINION AND ORDER

BY THE COMMISSION:

DOCUMENT

Before the Commission for consideration is a Joint Petition filed by The United Telephone Company of Pennsylvania d/b/a Sprint (Sprint) and Ernest Communications, Inc. (Ernest) requesting approval of a Master Interconnection, Collocation, and Resale Agreement (Agreement) The Agreement was filed pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code) (TA-96), including 47 U.S.C. §§ 251, 252, and 271, and the Commission's Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered on June 3, 1996; *Order on Reconsideration* entered on September 9, 1996). *Proposed*

Modifications to the review of Interconnection Agreements (Order entered on May 3, 2004). (*Implementation Orders*).

History of the Proceeding

On May 4, 2004, Sprint and Ernest filed the instant Joint Petition, seeking approval of the Agreement that would provide for the interconnection of the two companies' networks and make available to Ernest access to unbundled network elements (UNEs), wholesale telecommunications services, ancillary services, as well as the resale of tariffed services offered by Sprint.

The Agreement provides that the "Effective Date" is October 1, 2003, and that it will continue for a period of two years until September 30, 2005 unless earlier terminated in accordance with Section 5 of the Agreement. (Agreement at 14).

The Commission published notice of the Joint Petition and the Agreement in the *Pennsylvania Bulletin* on May 15, 2004, advising that any interested parties could file comments within ten days. No comments have been filed. Ernest was granted a certificate of public convenience on January 10, 2001, at Docket No. A-310749F0002, to provide services as a facilities based Competitive Local Exchange Carrier.

A. Standard of Review

The Commission's standard of review of a negotiated interconnection agreement is set forth in Section 252(e)(2) of TA-96, 47 U.S.C. § 252(e)(2). Section 252(e)(2) provides in pertinent part that:

- (2) Grounds for rejection. The state commission may only reject –

- (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that –
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. . .

With these criteria in mind, we will review the Agreement submitted by Sprint and Ernest.

B. Timeliness of Filing

The Agreement between Sprint and Ernest became effective on October 1, 2003. A period of approximately seven months elapsed from the time the Agreement was executed until it was submitted to the Commission for review. Neither TA-96 nor the Federal Communications Commission (FCC) rules interpreting TA-96 provide for the specific time in which the negotiated agreement is to be filed with the state commission. However, we have addressed our expectations regarding the proper time considerations to be observed with regard to negotiated agreements. (*See Implementation Order*, June 3, 1996 Order, slip op., p. 33).¹

¹ “The Act [TA-96] does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated interconnection agreement accompanied by a joint petition for adoption of the agreement shall be filed no later than thirty (30) days following the close of the negotiations phase or by day 190 following the request for interconnection.” (*Id.*).

We remind the Parties that failure to comply with our *Implementation Orders*, as well as this Order, could subject the Parties to civil penalties for violations pursuant to Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301.

C. Summary of Terms

The key provisions of the Agreement, as summarized by the Parties in the Joint Petition, are:

1. Resale Discounts:

A resale discount of 15.26% will apply in instances where Ernest provides its own Operator/Directory Assistance Service and a resale discount of 10.87% will apply in instances where Sprint provides Operator/Directory Assistance Service to Ernest.

2. Reciprocal Compensation

- End Office per minute of use \$0.003511
- Tandem Switching per minute of use \$0.003213
- Shared Transport per minute of use \$0.002131
- ISP-Bound Traffic Bill and Keep

3. Local Switching

The following rates will apply for Unbundled Local Switching:

<u>Local Switching</u>	<u>Recurring Charge</u>
Unbundled Switch Ports POTS (R1, B1)	\$2.70
Key System	\$2.70
CENTREX	\$2.70
Pay Station	\$2.70
ISDN-BRI	\$16.36
PRI-ISDN One Way	\$304.96
PRI-ISDN Two Way	\$504.99

4. 911

The following rates will apply for services associated with 911:

<u>911 Service</u>	<u>Recurring Charge</u>	<u>Non-Recurring Charge</u>
911 Tandem Port	\$18.74	\$119.84
Street Index Guide		--
Monthly	\$41.00	

In addition to the rates summarized above, Table 1 of the Agreement also includes, or references, the agreed-upon rates for: service order/installation repairs, NIDS, loops, line sharing, dedicated transport, multiplexing, unbundled dark fiber, unbundled network elements, and operator services (toll, local, and Directory Assistance).

Sprint and Ernest aver that the Agreement complies with the criteria identified in the TA-96 at 47 U.S.C. §252(e)(2)(A) quoted above, pursuant to which we must determine whether to accept or reject the Agreement. The Parties assert that the

Agreement is not discriminatory and that the interconnection arrangements contained in the Agreement are available to any other local exchange carrier certified to operate in Pennsylvania. Furthermore, the Parties note that other carriers are not bound by the terms of the Agreement and are free to negotiate independently with Sprint pursuant to Section 252 of the TA-96.

D. Disposition

We determine that the Agreement complies with the criteria identified in TA-96 at 47 U.S.C. § 252(e)(2)(A) quoted above, pursuant to which we must determine whether to accept or reject the Agreement. We further determine that the Agreement is not discriminatory and that the interconnection arrangements contained in the Agreement are available to any other telecommunications carrier under § 252(e) of TA-96. Furthermore, we note that other carriers are not bound by the terms of the Agreement and are free to pursue their own negotiated arrangements with Sprint.

We find that the Agreement is an important step towards allowing Ernest to compete with Sprint as a local telephone service carrier for both residential and business customers, which is what TA-96 contemplated and the Pennsylvania General Assembly envisioned when it enacted Section 3009(a) of the Public Utility Code, 66 Pa. C.S. § 3009(a), and that, therefore, the Agreement protects the public interest, convenience, and necessity.²

Having reviewed the Agreement, we shall approve it, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. We shall minimize the potential for

² It is noted that regardless of the types of services covered by this Interconnection Agreement, it would be a violation of the Public Utility Code if the Applicant began offering services or assessing surcharges to end users which it has not been authorized to provide and for which tariffs have not been authorized.

discrimination against other carriers not a party to the Agreement by providing here that our conditional approval of this Agreement shall not serve as precedent for agreements to be negotiated or arbitrated by other parties. This is consistent with our policy of encouraging settlements. (52 Pa. Code § 5.231; *see also*, 52 Pa. Code § 69.401, *et seq.*, relating to settlement guidelines, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.*). We note that in approving these privately negotiated agreements, including any provisions limiting unbundled access to Sprint's network, we express no opinion regarding the enforceability of our independent state authority preserved by 47 USC. § 251(d)(3) and any other applicable law.

On the basis of the foregoing, we find that the instant Agreement does not discriminate against a telecommunications carrier not a party to the negotiations. In this context, we will not require Sprint or Ernest to embody the terms of the Agreement in a filed tariff. However, consistent with our May 3, 2004 Order at Docket No. M-00960799, we do require that the incumbent local exchange carrier file a jointly signed, true and correct copy of the interconnection agreement with the Commission, within thirty days after the date that the interconnection agreement is signed for retention in the Commission's official files so that it is available to the public for inspection and copying consistent with the procedures related to public access to documents.

We also require that the incumbent local exchange carrier file an electronic, true and correct copy of the Interconnection Agreement in ".pdf format" for inclusion on the Commission's website.

With regard to the public interest element of this matter, we note that no negotiated interconnection agreement may affect those obligations of the telecommunications company in the areas of protection of public safety and welfare, service quality, and the rights of consumers. (*See, e.g.*, Section 253(b)). This is consistent with TA-96

wherein service quality and standards, *i.e.*, universal service, 911, Enhanced 911, and Telecommunications Relay Service, are inherent obligations of the local exchange company, and continue unaffected by a negotiated agreement. We have reviewed the Agreement's terms relating to 911 and E911 service. We conclude that the Agreement's terms relating to 911 and E911 services are consistent with the public interest.

Conclusion

Based on the foregoing and pursuant to Section 252 of TA-96, *supra*, and our *Implementation Orders*, we will approve the Interconnection Agreement between Sprint and Ernest filed on May 4, 2004; **THEREFORE**,

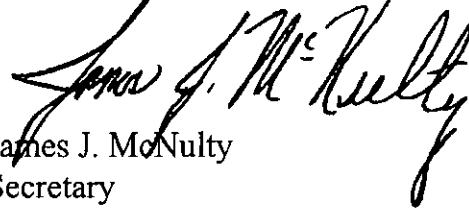
IT IS ORDERED:

1. That the Joint Petition of The United Telephone Company of Pennsylvania Inc. d/b/a Sprint and Ernest Communications, Inc. seeking approval of a Master Interconnection, Collocation and Resale Agreement filed on May 4, 2004, pursuant to the Telecommunications Act of 1996, and the Commission's Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered on June 3, 1996; *Order on reconsideration* entered on September 9, 1996) is granted, consistent with this Opinion and Order.

2. That approval of the Master Interconnection, Collocation, and Resale Agreement shall not serve as binding precedent for negotiated or arbitrated agreements between non-parties to the instant agreement.

3. That The United Telephone Company of Pennsylvania d/b/a Sprint shall file an electronic copy of the Master Interconnection, Collocation and Resale Agreement, in “.pdf format”, with this Commission within thirty (30) days of the date of entry of this Opinion and Order for inclusion on the Commission’s website.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 24, 2004

ORDER ENTERED: **JUN 25 2004**